IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CUSAP NO. 19 OF 2006

DATE OF DECISION: 22.03.2007

Ravi Jagota

…Appellant

Versus

Commissioner of Customs

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Jagmohan Bansal, Advocate,
for the Appellant.

Mr. Kamal Sehgal, Advocate,
for the respondent.

JUDGMENT

M.M. KUMAR, J.

This appeal filed under Section 130 of the Customs Act, 1962 (for brevity, 'the Act'), challenges the order dated 5.12.2005, passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (P-4), upholding the order in original dated 24.11.2003, passed by the Commissioner of Customs, Amritsar (P-3). It is appropriate to mention that the Commissioner of Customs, Amritsar,

has imposed a penalty of Rs. 3,00,000/- on the appellant under Section 112(a) of the Act. There are categorical findings recorded by the Appellate Tribunal as well as the Commissioner holding that the appellant Shri Ravi Jagota, Managing Director of M/s Youngman Industries Ltd., Ludhiana, as per the documents received from the US Customs, was the importer of the goods. There were special instructions issued by him which show that no sticker regarding description was to be affixed on the bales. It has been concluded that the import was for M/s Youngman Industries Ltd., which belongs to the appellant, and the goods were actually Acrylic Fibre, which was wrongly described as wool waste, which is the result of instructions issued by M/s Youngman Industries Ltd. to take advantage of the mis-declaration in respect of the value and description of goods. The Commissioner has also placed reliance on the statement made by Shri Sanjeev Arora and Shri Pardeep Sarin, which have been found to be admissible under Section 138B of the Act. The aforementioned provision has been made to tide over a situation when the maker of a statement has either died or could not be found or he is incapable of giving evidence or is kept out of the way by the opposite party or whose presence cannot be obtained without undue delay or expense, which under the circumstances of the case, the Court considers unreasonable. It has come on record that the maker of the statement has started living in USA and despite opportunity given he had failed to attend the hearings. We further find that the findings recorded by the Tribunal and other authorities are not without evidence or

perverse. In such like cases, this Court under appellate jurisdiction is not to entertain appeals unless substantial questions of law is involved. We cannot substitute findings of fact by re-appreciating evidence in preference to the one recorded by the Tribunal or other authorities in their orders when the same is not shown to be perverse. The appeal is wholly without merit and the same is accordingly dismissed.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

March 22, 2007

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